Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 756 of 2001
Old No. 142 of 2000

1. Deepak S/O Prem Singh, Sep. B Coy.,
   5 Platoon Kumaun Exivest, Dharchoola,
   C/O 56 A.P.O.
2. Prem Singh Bhatia, S/O Jeewan Singh
   R/O village Bamusi, Tahsil and
   Police Station Khatima
   District Udham Singh Nagar.

…. Appellants.

Versus

1. Smt. Anita Son W/o late Dr. Hira Singh Son,
2. Km. Kanika Son minor daughter of late
   Dr. Hira Singh Son,
3. Master Harsh Son, minor son of
   Dr. Hira Singh Son, all residents
   Of C/O Ganga Singh Dhapola, Kartikey
   Colony, Hari Nagar, P.O. Haripur Nayak,
   Tehsil Haldwani, district Nainital,
   Respondents 2 and 3 through their legal
   And natural guardian/mother Smt. Anita Son
4. Sri Ravindra Chandra Sharma, Senior
   Pharmacist, M/s Easter India Ltd.,
   Pilibhit Road, Charubeta, Khatima,
   District Udham Singh Nagar.

….. Respondents.

Sri P.S. Adhikari, learned Senior Counsel for the appellants.
Sri Lalit Belwal, learned counsel for the respondents.

Coram: Hon'ble Irshad Hussain, J.
Hon'ble B.S. Verma, J.

Date December 10, 2004

(Per Hon'ble B.S. Verma, J.)

This is an appeal under Section 173 of the Motor Vehicles Act, 1988 **(*for short the Act)*** against the judgment and award, dated 20-11-1999, passed by the Motor Accident Claims Tribunal/III Addl. District Judge, Nainital ***(in short the Tribunal)*** in Claim Petition No. 441 of 1997, whereby compensation of Rs.

9,00,000/- was awarded against the owner and driver of the scooter no. UP 02-5613 to the extent of 50% each. Aggrieved, the appellants have come up in appeal.

Relevant facts were that Dr. Hira Singh Son, a medical officer by profession, sustained fatal injuries on 21.6.1997 at about 8.20 p.m. being hit by a scooter on Khatima-Sitarganj road in front of a Rice Mill. According to claimants, the said vehicle was driven rashly and negligently. The deceased was shifted to Community Health Centre, Khatima and later-on, was removed to Kesh Lata Hospital Bareilly on 21.6.1997 and again, he was shifted to Batra Hospital, New Delhi on 22.6.1997 for his treatment, where he succumbed to his injuries on 24.6.1997. Post Mortem was conducted on the same day at A.I.I.M.S. New Delhi. The claim petition was filed by his dependants/legal heirs for compensation of Rs. 15,00,000/-.

The appellants filed their joint written statement, wherein the factum of accident was admitted but they asserted that accident occurred due to rashness and negligence on the part of the deceased; that the scooterist was driving his scooter at a moderate speed and that the appellant no.1 possessed valid driving licence with long experience of driving Prem Singh Bhatia admitted his ownership of the scooter.

Ravindra Chandra Sharma, previous owner of the scooter, filed his written statement alleging therein that the scooter was sold by executing sale letter in favour of Prem Singh Bhatia, on 28.5.1997 for a consideration of Rs.11,000/- and possession thereof was delivered. Intimation of sale was given to the R.T.O.

Learned Tribunal framed relevant issues in the case. It held that the accident was caused due to rash and negligent driving of the scooter by scooterist Deepak. Ultimately, the Tribunal after considering remaining service of seventeen and half years of the

deceased assessed his income at Rs. 24,95,430/- and after deducting 1/3rd towards personal expenses, loss of dependency was calculated at Rs. 16,63,620/-. Taking into consideration tax liabilities, etc. of the deceased, ultimately claim petition was decreed for compensation of Rs. 9,00,000/-.

In appeal, appellant challenged the finding of the Tribunal on the point of negligence and contended that there was contributory negligence on the part of the deceased. It was further contended that income of the deceased was not properly adjudged and that the award of Rs. 50,000/- toward medical expenses was not supported by the evidence.

To prove rash and negligent act on the part of the scooterist, the claimants examined P.W.2 Mohan Chandra Pande, who was accompanying the deceased at the relevant time. He testified that on 21.6.1997, at 8-20 p.m., he accompanied by the deceased was returning after evening walk. When they reached near Bhud Rice Mill, suddenly scooter no. UP 02-5613 driven rashly and negligently came from behind and hit the deceased between his legs and dragged him upside down upto the right side of the road. As a result of accident, he also fell down. With the help of local people, the scooterist Deepak was apprehended at the spot. The deceased was taken for treatment of Community Health Centre Khatima and F.I.R. was lodged with the police by P.W. 2. He was cross-examined but nothing material favourable to the appellants could be brought on record, rather it came out that he also suffered injury in the accident. P.W.2 gave ocular account of the accident. He is natural and independent witness. On the other hand, opposite parties examined appellant no.1 as D.W.1. In his cross-examination, he admitted that report was lodged against him in the police station and he obtained bail in the case and the scooter was got released by the order of the criminal court. He further admitted that injured Dr. Son, who was posted in the Community Health Centre, Khatima, later on died. Record revealed that charge-sheet was submitted against the

scooterist Deepak after investigation of the case registered on the F.I.R. by P.W.2. The appellant could not lead any evidence to indicate that the scooterist was innocent and that the deceased contributed to the negligence. Therefore, in our opinion, the learned Tribunal committed no illegality or infirmity in holding that the accident was caused due to rash and negligent driving by the scooterist Deepak Singh and liability to pay compensation was rightly fastened on the driver and owner of the offending scooter.

So far as finding on the point of income of the deceased and quantum of compensation is concerned, undisputedly, the deceased was employed as Medical Officer at Khatima Community Heath Centre. The claimants filed certified copy of the Last Pay Certificate of the deceased,(paper no. 5-C/4) which reveals that the deceased used to draw total salary of Rs. 11,883/- per month, out of which he was contributing 2,000/- toward General Provident Fund, Rs. 120/- towards Group Insurance Scheme and Rs. 300/- towards Income Tax deductions. Monthly income of the deceased was proved from the L.P.C., therefore, the learned Tribunal rightly calculated annual income at Rs. 1,42,596/-. The contention of the appellants that income of Rs. 89,470/- as mentioned in paper on. 5-C/2 was relevant has no force. The document is a certificate issued by the Income Tax Officer for the assessment year 1995-96, i.e. for the financial year 1994-95 showing the *returned income* of the deceased to be Rs. 89470/-. There is no mention of gross-salary. It is well known that certain amounts, admissible to government servants, are exempted for purposes of income tax returns. The accident occurred after more than two years, i.e. on 21-6-1997. The entries of the Last Pay Certificate were not disputed. The Tribunal determined loss of income of the deceased at Rs. 16,63,620/-, but awarded sum of Rs. 8,31,810/- only, which was nearly 50% of the total loss. We have gone through the entire record including the impugned judgment and award. The Tribunal nowhere held the claimants entitled for sum of Rs. 50,000/- towards medical expenses alone. The Tribunal observed that claimants would have spent more

than Rs. 50,000/- towards treatment and last rituals, etc. Ultimately, instead of awarding different amounts under different counts, total compensation was rounded up to Rs. 9,00,000/-.

In our view, the rounding up of compensation to Rs. 9,00,000/-(nine lacs) does not appear to be justified, because the deceased was a government servant and any expenses incurred towards medical treatment must have been reimbursed to the claimants. However, taking into account funeral expenses and loss of consortium, the amount could have been rounded only upto Rs. 8,40,000/- (Rs. Eight lacs forty thousand). The Tribunal has awarded interest @ 9% per annum, which in the peculiar circumstances and the facts of the case is also on the higher side. We are of the considered view that interest @ 6% per annum in this case shall be just and proper. The compensation needs to be reduced accordingly with the modification of the judgment and order under appeal.

For the reasons aforesaid, the appeal succeeds partly and is to be allowed accordingly.

The appeal is partly allowed. The judgment and award dated 20-11-1999 is modified and the compensation awarded is reduced to Rs. 8,40,000/-(Rs. Eight lacs forty thousand) instead of Rs. 9,00,000/-. The interest shall be payable @ 6% per annum from the date of presentation of the claim petition till the date of payment.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.

(B.S. Verma, J.) **(Irshad Hussain, J.)**

RCP